

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CIVIL ACTION NO 16-MD-2738 (FLW) (LHG)

1

----- : TRANSCRIPT OF
IN RE JOHNSON & JOHNSON : STATUS CONFERENCE
POWDER PRODUCTS MARKETING, :
SALES PRACTICES. : MAY 2, 2017
----- :

CLARKSON S. FISHER UNITED STATES COURTHOUSE
402 EAST STATE STREET, TRENTON, NJ 08608

B E F O R E: THE HONORABLE FREDA L. WOLFSON, USDJ
THE HONORABLE LOIS H. GOODMAN, USMJ

A P P E A R A N C E S:

BEASLEY ALLEN, ESQUIRES

BY: P. LEIGH O'DELL, ESQUIRE (ALABAMA)

-and-

ASHCRAFT & GEREL, ESQUIRES

BY: MICHELLE A. PARFITT, ESQUIRE (VIRGINIA)

CHRIS TISI, ESQUIRE (VIRGINIA)

-and-

COHEN, PLACITELLA & ROTH, ESQUIRES

BY: CHRISTOPHER M. PLACITELLA, ESQUIRE (NEW JERSEY)

On Behalf of the Plaintiffs Steering Committee

DRINKER, BIDDLE & REATH, ESQUIRES

BY: JULIE L. TERSIGNI, ESQUIRE (NEW JERSEY)

-and-

SHOOK, HARDY & BACON, ESQUIRES

BY: KATHLEEN FRAZIER, ESQUIRE (TEXAS)

PATRICK OOT, ESQUIRE (WASHINGTON, D.C.)

On behalf of Defendant Johnson & Johnson

(Continued)

* * * * *

VINCENT RUSSONIELLO, RPR, CRR, CCR
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A P P E A R A N C E S C O N T I N U E D:

SEYFARTH & SHAW, ESQUIRES
BY: THOMAS L. LOCKE, ESQUIRE (WASHINGTON D.C.)
On behalf of Defendant PCPC

COUGHLIN DUFFY, ESQUIRES
BY: LORNA A. DOTRO, ESQUIRE (NEW JERSEY)
-and-
GORDON & REES, ESQUIRES
BY: ANN THORNTON FIELD, ESQUIRE (PENNSYLVANIA)
On behalf of Defendant Imerys Talc America

C E R T I F I C A T E

PURSUANT TO TITLE 28, U.S.C., SECTION 753, THE
FOLLOWING TRANSCRIPT IS CERTIFIED TO BE AN ACCURATE
TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE
ABOVE-ENTITLED MATTER.

S/Vincent Russoniello
VINCENT RUSSONIELLO, CCR
OFFICIAL U.S. COURT REPORTER

1 (In open court.)

2 THE CLERK: All rise.

3 JUDGE WOLFSON: Thank you.

4 JUDGE GOODMAN: Thank you.

5 (Appearances noted.)

6 (Discussion off-the-record.)

7 * * * * *

8 JUDGE WOLFSON: On the record.

9 JUDGE GOODMAN: I just wanted to put on the
10 record where we're going in terms of the preservation
11 notices that are going to be sent out to the
12 healthcare providers for the different plaintiffs.

13 With regard to existing cases, those notices
14 will be sent out within 45 days.

15 With regard to new and transferred cases, the
16 notices will be sent out within 30 days of when those
17 cases get filed here.

18 In addition to the preservation notice
19 recipients that everyone has agreed on, I'm ordering
20 that plaintiffs include those categories of providers
21 that defendants identified, the hematologists, the
22 gastroenterologists, the pharmacists, the mental
23 health providers if the plaintiff made a claim for
24 emotional distress.

25 By enumerating those, I don't mean to leave

1 out any because I am fine with the list that
2 defendants have suggested.

3 With regard to those that you have agreed on,
4 I believe that you have agreed on them without any
5 time restraints.

6 With regard to the others that I'm ordering
7 you to include, I'm telling you to go back to
8 providers that were providing care services to the
9 plaintiffs at any time within the five years preceding
10 the plaintiffs' diagnosis and forward to present.

11 I think we're all in agreement. But I want it
12 to be clear that anyone receiving a preservation
13 notice should be told to preserve their entire file to
14 the extent it still exists, not just the file for the
15 five-year period.

16 Is that clear? Any questions or
17 clarifications needed?

18 MS. O'DELL: No, your Honor.

19 MS. FRAZIER: No, your Honor.

20 JUDGE WOLFSON: Off the record.

21 (Discussion off-the-record.)

22 * * * * *

23 JUDGE WOLFSON: We've been having a discussion
24 with regard to responsiveness of J&J's production
25 specifically regarding not engaging in duplicative

1 discovery of what was already done in the state court
2 litigation.

3 We had some back and forth with Mr. Tisi on
4 behalf of the plaintiffs group and Ms. Frazier as to
5 focusing on specifically the document requests that
6 were made in the St. Louis litigation.

7 Ms. Frazier, you submitted a letter response
8 on April 28th as to what your production was to
9 encompass. Would you please place on the record what
10 that was and what the meaning of that is so we can go
11 forward.

12 MS. FRAZIER: Okay.

13 On page 3 of the April 28th letter under the
14 header "Prior Productions and Supplemental Discovery,"
15 I gave a bullet pointed list of what our general
16 responsiveness criteria were used in the review for
17 the previous productions, and the first bullet point
18 says:

19 "Generally, documents related to talc, baby
20 powder, Johnson's Baby Powder, or Shower to Shower
21 were considered responsive if they related to the
22 safety, marketing, research and development, testing,
23 complaints, specifications, labeling, or regulatory
24 issues."

25 The word "generally" for my purposes was meant

1 to limit it with respect to the bullet points that
2 follow that first sentence.

3 In other words, if you take into account those
4 bullet points that follow, you could actually delete
5 the word "generally."

6 JUDGE WOLFSON: I think we have an
7 understanding then.

8 Now, we're ready to move forward with the
9 plaintiffs serving whatever supplemental requests that
10 are appropriate.

11 MR. TISI: Thank you.

12 JUDGE WOLFSON: Off the record.

13 (Discussion off-the-record.)

14 * * * * *

15 JUDGE GOODMAN: So now we're talking about the
16 third party subpoenas that plaintiffs have served on
17 various entities and individuals that's on page 4 of
18 the proposed joint agendas that you sent for today's
19 conference.

20 JUDGE WOLFSON: Do you have copies of the
21 subpoenas?

22 MS. PARFITT: Your Honor, I have only one
23 copy. I can provide them to the Court.

24 (Pause.)

25 JUDGE GOODMAN: As we read this, it appears

1 that defendants are objecting to the scope and breadth
2 of the subpoenas, and so we would like to hear a
3 little bit about the basis for the subpoenas, what
4 plaintiffs hope to get that's relevant to the products
5 at issue in this case from these other manufacturers,
6 and then get a sense of what the objections are.

7 We've just been handed copies of the
8 subpoenas. It looks like the requests start on page
9 14. I'm looking at the first one and that was served
10 on Proctor & Gamble.

11 I'm looking at this, "Schedule A, the
12 relationship between you, Proctor & Gamble and the
13 following entities."

14 It goes A through V including in there the
15 defendants, Imerys, I see Johnson & Johnson, I see
16 PCPC, and many others -- I do not know some
17 individuals -- and some law firms. That's the
18 relationship.

19 "No. 2, communications relating to talc."

20 Tell me where you are going with this.

21 MS. PARFITT: Absolutely.

22 If we can first address Colgate Palmolive. As
23 your Honor has correctly indicated, we've got only
24 three. Actually, the attachment references Schedule
25 A, basically three questions.

1 The first is obviously the relationship
2 between these defendants and these companies, and I'll
3 go through them.

4 The second one is communications regarding to
5 these entities and their products regarding to and
6 with regard to the general issue in this case, the
7 general causation which your Honors have permitted
8 counsel to in fact make inquiry of not only in
9 personal injury cases but also the consumer.

10 A lot of these have relevance to the consumer
11 class cases which is very important. Some of the
12 requests that we would make through interrogatories
13 and requests for production might vary a little bit
14 because we're also encompassing the consumer class.

15 And the last question -- and there are really
16 three, they are all fairly identical -- address the
17 fact that we've got -- actually, it's two questions
18 and the last is the documents referencing them.

19 Let me tell you a little bit about the
20 defendants and the third parties.

21 JUDGE GOODMAN: Let me read Schedule B first.
22 That's also documents showing the "relationship" is
23 one. Two is "communications."

24 MS. PARFITT: Correct.

25 JUDGE GOODMAN: And three, "documents,

1 receipts, invoices" --

2 MS. PARFITT: Correct.

3 JUDGE GOODMAN: -- "accounting, proposals,
4 remuneration paid" -- I assume by the party you are
5 serving on -- "to any of the following entities," and
6 that is not limited to in some way to talc. I'll
7 certainly hear you. But I have no idea what that
8 means.

9 MS. PARFITT: I think what's important perhaps
10 is to understand those individuals to whom we're
11 asking relationship, asking about the relationship.

12 For instance, CRE is the Center for Regulatory
13 Effectiveness. They are very much tied into the CIR.
14 If you recall perhaps even from science day, they were
15 part of the CIR, which is the Cosmetic Ingredient
16 Review, the safety risk assessment for talc.

17 Members of the CRE and CIR were part of
18 putting that review draft together, and then
19 ultimately finalizing that draft, and 15 talks about
20 the safety or not of talc.

21 JUDGE WOLFSON: There is no limitation to
22 these questions. It's just the relationship.

23 Let's start with Colgate Palmolive. Why have
24 you targeted Colgate Palmolive.

25 MS. PARFITT: Because we believe that Colgate

1 Palmolive also with regard to the asbestos issue, with
2 regard to the silica issue, with regard to the
3 ingredients in talc also would have had some
4 documentation or communications back and forth between
5 J&J and Imerys, perhaps PCPC --

6 JUDGE WOLFSON: Because they produce a talc
7 product?

8 MS. PARFITT: Because they also have related
9 products, right, that are used within their products.
10 That's correct.

11 They would also have had some engagement with
12 talc over the course of the production of their
13 products generally. We don't know what those are. So
14 we have to make some inquiry and they are fairly
15 general.

16 JUDGE WOLFSON: But you have to have some
17 limitation. If you're targeting them -- look, they'll
18 have their own objections to make. We haven't even
19 gotten to those upon whom you served the subpoena.
20 We're simply looking at J&J saying that this is going
21 to cover products that aren't involved here.

22 I have no doubt that whoever you are serving
23 this on will be making their applications to Judge
24 Goodman in no time to quash these subpoenas as being
25 overbroad and burdensome to them. And the way they

1 are drafted, you are open to that. So I'm telling you
2 that today.

3 MS. PARFITT: If I may, maybe I can start
4 here. Because of the product's history, we're talking
5 decades, and I know your Honors know that. These
6 Palmolive -- many of the other third-party persons
7 have been involved in production of talc like products
8 for decades as well. And so the difficulty we have as
9 Plaintiffs is -- I guess we've said this too many
10 times -- we don't know what we don't know.

11 We know that they have talc related products.
12 And so we know that they have been involved in,
13 perhaps, PCPC, the trade association. A lot of these
14 folks are members of the trade association and they
15 work collectively with regard to decision-making
16 regarding the safety of talc or not. They work
17 collectively with regard to decision-making as to
18 whether or not talc should be regulated in some form
19 or another.

20 So all of those third parties that we have
21 here are members either of a trade association or in
22 fact have had some production history of talc related
23 products. And so what we're trying to get out is what
24 period of time?

25 JUDGE WOLFSON: But you have some limitation

1 in No. 2, but you have no limitation in No. 1. At
2 least put that same limitation in No. 1.

3 JUDGE GOODMAN: This is a deposition notice?
4 I'm looking at Schedule A. That's a deposition
5 notice, isn't it?

6 MS. PARFITT: No. What we had asked for, your
7 Honor, is --

8 JUDGE GOODMAN: It certainly looks like it.

9 JUDGE WOLFSON: It says, "please find attached
10 a subpoena for testimony and production of associated
11 documents..." It is a subpoena duces tecum plus
12 document production because in fact you said "appear
13 and be prepared to provide testimony."

14 MS. PARFITT: And what we have done, your
15 Honor, and we have done this in state court cases, not
16 with these corporate individuals, but we communicated
17 with their counsel and we have had discussions with
18 regard to the nature of the production, and then we
19 made the decision, perhaps, held off the deposition in
20 most cases, get the production of the documents, look
21 through them, and see if that adequately answers the
22 needs of the plaintiffs.

23 We're not rushing to take depositions of every
24 single one of these individuals. But what it does
25 provide us with is a date certain certain that these

1 individuals, these third parties turn over the
2 documents.

3 I can tell you personally, I've had some of
4 these attorneys call me that represent these
5 companies, these third parties, and say, Ms. Parfitt,
6 this is what we have available.

7 We have conversations and I'm able to discern
8 at that point in time the period of time that they
9 might have relevant documents. And just like J&J and
10 Imerys, when they say, we make products that just
11 don't involve talc. We make Tylenol. We have other
12 products. You don't need to know about our Tylenol.
13 You may need to know about our talc.

14 Similarly, with regard to many of these third
15 parties, we have tried to be very cooperative in
16 scope. A lot of this goes to the communication. What
17 do you have? Over what time period?

18 One company I spoke with indicated, Michelle,
19 at one point in time we were a very large company.
20 Now, we're down to a handful of people. You're asking
21 for all my documents and you want them in 30 days. I
22 can't get them to you in 30 days. But I can get them
23 to you maybe in 90 days based upon the scope.

24 So that's the kind of coordination. But I can
25 assure the Court that each one of these third-party

1 subpoenas have been issued to people upon reasonable
2 belief, information and belief, they have something to
3 do with the talc world. Whether or not they had
4 involvement in the regulatory history of the product,
5 whether or not they have some marketing history,
6 whether or not they were a marketing and sales group
7 for one of these talc products, it depends on the
8 third party.

9 JUDGE WOLFSON: Can you tell me the relevance
10 of this to causation? Because obviously these aren't
11 J&J's products. They are their own talc products and
12 what they may have known or what they put in their own
13 is a different question. So where is this going to
14 causation?

15 MS. PARFITT: General causation, whether or
16 not they have evaluated the safety of talc themselves.
17 In some of these cases many of them have had to make
18 those kinds of judgments as to whether or not to
19 include talc in some of their products that they make
20 or not.

21 JUDGE WOLFSON: Well, their judgements don't
22 make a big difference to us unless they were shared
23 with J&J somewhere and they were made aware. You have
24 to show some knowledge that they communicated
25 something with J&J that made them aware at some point.

1 That's why I'm saying we really need to hone
2 these things some way that bring it into our case, or
3 if they ran their own studies and had experts, but
4 again how that was shared and known in the industry.

5 MS. PARFITT: If I may, I can answer that one,
6 what we do know is that these third parties many of
7 them are parts of trade associations. They contribute
8 to the information base with regard to the safety of
9 talc along with J&J and Imerys and many other
10 manufacturers that make talc related products. And so
11 they share information. They pool resources.

12 So what we're interested in knowing is when
13 they pooled resources with J&J, and that could be
14 human resources, scientific information, medical
15 information. There is a sharing of the technology, of
16 the scientific knowledge with regard to the safety.
17 They all pool this information together.

18 JUDGE GOODMAN: But that's not what you are
19 asking for here.

20 MS. PARFITT: I am asking for the
21 communications. So what I would like to know,
22 frankly, is what is the relationship between Colgate
23 Palmolive and someone like CRE or IMA.

24 JUDGE WOLFSON: Who is Jim Tozzi?

25 MS. PARFITT: Jim Tozzi is with CRE, I

1 believe. It's CRE or CIR. I should know.

2 MR. LOCKE: If I can interject, it's CRE. CRE
3 is a separate entity from CIR. It's a misstatement to
4 say that those entities are tied together. CRE
5 submitted information, its position on talc, to CIR
6 along with a lot of other entities. That's all part
7 of the public record that we already produced.

8 MS. PARFITT: Your Honor, it's not, if I may
9 differ with Mr. Locke.

10 We have not had the benefit of all the
11 communications between CRE, CIR, IMA. All of those
12 are industry related organizations and they are
13 industries that have had experience with regard to the
14 talc products. They are industries who have engaged
15 J&J and Imerys, some of the defendants in this case,
16 with regard to the safety of talc, which is a general
17 causation issue.

18 All of them have had some discussions,
19 communications, research science that has been shared
20 with J&J, the extent to which I have to acknowledge I
21 don't know the extent. I won't know the extent until
22 I look at their documents.

23 But I can tell you, upon reviewing some
24 third-party productions, and not all of them because
25 we don't have them all, what we have certainly been

1 able to find and see and review is that there has been
2 this is interrelationship between these industrial
3 organizations or industries that actually produce talc
4 related products sometime either in their past or
5 currently where there are decisions made with regard
6 to the safety.

7 That's the general causation. It would be
8 important to know if a decision was made not to
9 include talc in a product again because there is a
10 litany of science which they've collected which they
11 shared with J&J and Imerys, and J&J made the decision
12 either not to warn or not to take proper directives
13 with regard to informing the public and the scientific
14 -- if one group does and one group doesn't and you are
15 talking about the same product, that's important.

16 So what we're trying to do is just get our
17 arms around these other third parties. This isn't a
18 hit or miss where we threw a stone out there and just
19 whatever we hit. We have collectively gone through
20 these individual groups looking at Imerys and J&J
21 documents.

22 Are there communications with CIR? Are there
23 communications with CRE? Are there communications
24 with Palmolive? We've looked at that. We have
25 perhaps their side of the communication. We may not

1 have the full exchange.

2 So that's what we're trying to get at. We
3 moved these very, very slowly. There are frankly a
4 handful of third parties that have been served up to
5 this date. We'll look at them, find out if they're
6 meaningful, and report back to the Court. We're not
7 trying to conduct an exercise in futility here.

8 We have closely examined what documents we do
9 have and the knowledge that we do have with regard to
10 Imerys and J&J and PCPC's relationship with these
11 various industries, and we have reason to believe that
12 it provides important information about the safety of
13 talc, the general causation issue here, those sales
14 and marketing that go to the consumer case.

15 Again, that's a little different, a little
16 broader, the sales and marketing, but your Honors have
17 said we may look at those issues as well. So the
18 collective group, that's precisely what we're doing.
19 Long history. Lots of organizations. Lots of
20 regulatory meetings where all these people may have
21 participated or at least some of them.

22 So what we did is we tried to take a slow-step
23 approach. We didn't subpoena the world. We sent
24 basically less than ten third-party subpoenas out
25 which your Honor has. We're collecting those. We're

1 talking to their counsel.

2 At this point in time, we don't have grave
3 objections from their counsel. If it's irrelevant,
4 they will let us know that and that will become a
5 debate. But I will tell you, I think this is a good
6 first step.

7 MR. PLACITELLA: Let's get some concrete
8 examples. Let's say it's Colgate Palmolive and they
9 get their talc from the same mine at a select period
10 of time as Johnson & Johnson did, and Colgate
11 Palmolive ran tests on the talc from that mine that go
12 to the toxicity or constituents of ingredients of that
13 talc, that would be relevant to what was going into
14 the Johnson & Johnson talc.

15 They may do a test on an Imerys supply which
16 would be similar if not identical to Johnson &
17 Johnson. That's an example. Or a lot of times what
18 happens in industry is, for example, Colgate Palmolive
19 will run tests on the Johnson & Johnson talc as a
20 competitive testing and that happens, and I'm sure
21 Johnson & Johnson did it as it relates to Colgate
22 Palmolive.

23 For example, I know why they went to Manville
24 because Manville was the world expert on testing for
25 asbestos. And what companies would do is, they would

1 actually go to Johns Manville and they would ask them
2 to run tests on their talc to determine if they have
3 asbestos in their talc. The Johns-Manville is pretty
4 easy. I know from years of experience, it's
5 electronically stored. It's really not burdensome in
6 any respect. Or there is information back and forth
7 between Johnson & Johnson and say Colgate Palmolive on
8 the toxicity of talc generally or through a trade
9 association on the toxicity of talc.

10 Those are some examples of the kind of
11 information we think would be relevant to the science
12 and to causation directly and it directly relates to
13 the products at issue, just as examples.

14 MS. DOTRO: Your Honor, anything related to
15 individual testing by any of the entities served with
16 the subpoenas was not asked for in the subpoenas.
17 These subpoenas go strictly to regulatory, liability
18 issues that the Court has said we are not addressing
19 now.

20 The plaintiffs made two points in the agenda.
21 First, that this goes to the defendants' knowledge of
22 the increased risk of cancer. That's company
23 liability, Judge, not general causation. You've made
24 it clear that we are going directly to general
25 causation.

1 They talk about contaminants found in these
2 products. Contaminants found in the products of
3 Colgate Palmolive, Proctor & Gamble, Johns Manville
4 and any of these other entities are not products at
5 issue in this litigation.

6 We think that these subpoenas are overly broad
7 and they're outside of the scope of what the Court has
8 ordered be done at this time.

9 MS. FRAZIER: Your Honor, I don't have really
10 anything to add beyond what Ms. Dotro has said. But I
11 think what we're trying to avoid, if possible, is
12 these side issues slowing down the progress of moving
13 toward the causation issue.

14 JUDGE GOODMAN: Well, I'm going to tell you, I
15 have a real problem with this and I didn't think I was
16 going to have this problem going into it.

17 Mr. Placitella, what you said makes perfect
18 sense. But I don't see it in the schedules to these
19 subpoenas. I see something much broader. I don't
20 see, as Ms. Dotro said, I don't see a request for
21 testing that was done. To me what both you and
22 Ms. Parfitt have outlined are communications with J&J,
23 not with Tozzi and CRE and all of these other entities
24 let alone law firms. I don't understand it.

25 To me what your identifying that you are

1 trying to find out is testing that was done as to the
2 causation issues and communicated to defendants. Why
3 isn't that what you are asking for?

4 JUDGE WOLFSON: Or even communicated to one of
5 these agencies, but again related to that testing.

6 JUDGE GOODMAN: It somehow had to get back to
7 them or else you can't hold them to have notice of it,
8 knowledge of it, or to have acted on it.

9 I'm also troubled by what I hear as these
10 subpoenas, which I think are incredibly broad, being
11 the first step and that perhaps you intend to do more
12 like these.

13 I see this as opening up a whole other avenue
14 of litigation that will not necessarily all come to
15 meet, but maybe elsewhere around the country, and this
16 is going to be a real detour that I would rather not
17 go down because I don't see the connection between
18 what you are saying and what I'm reading.

19 MS. PARFITT: May I be heard, your Honor?

20 JUDGE GOODMAN: Sure.

21 MS. PARFITT: I appreciate it.

22 Perhaps, I'll take the last point that your
23 Honor made and that is with regard to the first step.

24 What I was referring to, your Honor, is that
25 there are five subpoenas here and what we are hoping

1 to do -- we tried to target our efforts to obtain to
2 the best of our ability relevant documentation,
3 communication, testing, sales and marketing
4 information relevant to the consumer case.

5 JUDGE WOLFSON: But you didn't say those
6 things. Let's go with that, Ms. Parfitt. That's the
7 problem that Judge Goodman is addressing.

8 Let's be clear so the record says it.

9 "Schedule A, the relationship between you and
10 each of the following entities, A through V," without
11 limitation, relationship. That's to me is so
12 overbroad I'd strike it right there.

13 "No. 2, communications between you and any of
14 the following entities relating to talc, and/or talcum
15 powder products, including but not limited to; the
16 health effects of talc, and/or talcum powder products;
17 talc based body powder and/or ovarian cancer; and the
18 presence of asbestos, arsenic, silica, quartz, or any
19 other adulterants..."

20 Communications. It doesn't say testing. It
21 doesn't say documents related to testing. It doesn't
22 say, for instance, as Mr. Placitella honed in on,
23 which I certainly understand then the example you gave
24 of, if indeed they obtained talc from a particular
25 mine that you think J&J did as well that you believe

1 they tested and was adulterated or whatever, well,
2 let's get to what we're talking about. This doesn't
3 do it. This is every communication they've ever had.
4 That doesn't get us to the defendants in this case.

5 So you may be able to come up with subpoenas
6 that are more properly drawn that would deal with the
7 issues of causation, but these don't. They do lots of
8 things and that's not what -- we'll use the phrase --
9 a fishing expedition is not for discovery. Let's hone
10 it. This does not.

11 It's very nice that these other companies are
12 calling you up and happily just talking to you and
13 saying let's break this down to what it is. But it's
14 your job in the first instance to narrow it. Because
15 the next step is, if we don't do that here, they are
16 getting their motions to file to quash. They are all
17 shaking their heads, yes, that's what's going to
18 happen, and we're telling you today, it's going to
19 happen.

20 MS. PARFITT: Why don't we do this, your
21 Honor, if this will be agreeable with the Court.

22 JUDGE WOLFSON: Okay.

23 MS. PARFITT: Why don't we, understanding the
24 Court's concern, and hopefully clarifying perhaps a
25 little bit.

1 You mentioned a law firm. Why would you want
2 the law firm? It just so happens, that law firm
3 funded a scientific study on general causation. That
4 was the relevance. We weren't just reaching out to
5 law firms ad hoc. This happens to be a law firm that
6 is repeatedly referred to throughout the J&J/Imerys
7 documents.

8 THE COURT: Not that they may have had a 50
9 year history with this law firm doing all kinds of
10 things for them unrelated. This is the problem with
11 all of these requests.

12 JUDGE GOODMAN: And then the third request
13 which is "payments, dues, membership fees,
14 contributions, remunerations," I think you see where
15 we're going here.

16 MS. PARFITT: Judge Goodman, I understand. Let
17 me just clarify with regard to invoices and dues which
18 might sound a little bit outlandish.

19 That goes to participation. The CTFA and PCPC
20 industries can participate as a representative
21 industry in this larger trade association. The trade
22 association one of its missions is to -- how should I
23 say -- promote products.

24 So we were looking to see -- I understand the
25 lack of clarity here and I hear what the Court is

1 saying. But the reason for invoices, that was to say
2 how much an industry might pay to be a participant in
3 a trade association. I think I understand what the
4 Court is asking. I hear you loud and clear.

5 JUDGE WOLFSON: I think you do.

6 MS. PARFITT: I do. So why don't we step back
7 and we will caucus and we will hopefully come up with
8 something -- excuse me, your Honor.

9 (Pause.)

10 JUDGE WOLFSON: Mr. Tisi.

11 MR. TISI: I think there was one other issue
12 that came up and candidly I was involved in drafting
13 some of these. So let me at least conceptualize some
14 of these.

15 You heard on science day a lot of these
16 different organizations have weighed in on the talc
17 issue and I suspect when we get to the general
18 causation question, there is going to be some
19 representation, well, there is this long list of
20 organizations that have weighed in on this topic one
21 way or the other and this gives the Court --
22 obviously, testing the product is one aspect of it.
23 But one of the things that will be put out there is,
24 well, these organizations have weighed in and said
25 this.

1 And one of the things we come across in almost
2 every one of these cases -- I even remember back in
3 the day to the blood litigation cases where we dealt
4 with -- a lot of the different organizations that have
5 a stake in the issue will influence or attempt to
6 influence one way or the other doing it nefariously
7 not nefariously, whatever, the outcome of the various
8 organizations that weigh in on the topic. And one of
9 the things we may want to do is to impeach or not or
10 support the conclusions of some of these organizations
11 saying, Look, you were funded by, you received funding
12 by this organization.

13 This is really an industry organization that
14 is masquerading as an independent organization. This
15 is a company that you only provided half of the
16 science for this organization to consider when they
17 concluded that talc either was or was not a
18 carcinogen.

19 And so one of the things that we constantly
20 come up with in any litigation of this type is trying
21 to look at the organizations that have weighed in on
22 the topic and say to them, Was this an independent
23 review of the medical and scientific literature? Or,
24 Was this something that was done where there was undue
25 influence in order to affect the process?

1 So when you see the long list of people -- and
2 I don't have it in front of me --

3 JUDGE WOLFSON: Of course, these subpoenas
4 were not served on those organizations.

5 MR. TISI: But they were served on the
6 companies that participated in those organizations.

7 For example -- and, again, I don't have the
8 document in front of me. But I'm very familiar
9 because I did this kind of a thing where you have,
10 let's say, the Endocrine Society in a case and
11 different organizations weigh in on a topic and you
12 find out that 10 of the 12 people that weighed in on
13 the topic were industry consultants, had been paid by
14 the industry, that they also had an interest in the
15 product.

16 That's why when we chose the list of people
17 that are in this Schedule A, these were people with
18 whom these companies or organizations had an interest.

19 JUDGE WOLFSON: I know what you are saying and
20 believe me I understood that from why you asked for
21 contributions, dues, dinners. I understand the issue
22 of influence.

23 I understand also from science day and many of
24 the other cases I've handled that many studies are
25 funded by different organizations and entities and

1 that therefore there is an argument as to bias as to
2 how the study is done. I understand that.

3 The problem that we have, and I don't think we
4 have to belabor it because I think I've already heard
5 from Ms. Parfitt that you are going to go back, is
6 that that you've created a document request that are
7 not narrowed to what those concerns are.

8 So let's go there. Let's relate it to the
9 products that we're talking about, talc products, and
10 not anything else. For instance, if they've had
11 communications with these various entities for
12 50 years about other products, we don't want those.

13 MR. TISI: It's not just notice to the
14 defendants.

15 JUDGE WOLFSON: I know it's not a notice. I
16 know you are talking about a causation issue as
17 well --

18 MR. TISI: Correct.

19 JUDGE WOLFSON: -- because what is the testing
20 being done and did you provide them with certain
21 things that could have influenced the testing when it
22 was done of talc products even if it wasn't
23 specifically Shower to Shower, and then you want to
24 relate back. And, by the way, they looked at where
25 the talc was coming from and it was the same place.

1 There are separate issues here of causation
2 and knowledge and we appreciate those. But on the
3 causation issues, to start with, these are not
4 narrowed and they are certainly not narrowed on any
5 kind of knowledge question.

6 MR. TISI: I didn't want there to be any
7 misunderstanding that we were only trying to get what
8 the defendants knew or should have known because that
9 implicates the liability question. The question is
10 when an organization comes out with a recommendation,
11 were they unduly influenced by somebody else?

12 JUDGE WOLFSON: I know that and I get that,
13 but that is not what these requests do and they go
14 well beyond.

15 So go back to the drawing board. Frankly, I
16 would tell you at this point -- I don't care what your
17 negotiations are with the third parties. You can tell
18 them that the Court has said not to respond to them
19 until they are narrowed. Because before they would
20 even respond, I know J&J is going to try and block it
21 and Imerys or whoever else.

22 You wanted to say something, Ms. Dotro?

23 MS. DOTRO: Yes, Judge.

24 There is one additional subpoena you'll see at
25 the end to Mr. William Kelly.

1 JUDGE WOLFSON: Yes. Who is that?

2 MS. DOTRO: He is an attorney regulatory
3 consultant that was hired by Imerys. So we would like
4 leave to file a separate motion to quash as to the
5 entire subpoena to Mr. Kelly.

6 JUDGE WOLFSON: You're going to have privilege
7 issues as to him?

8 MS. DOTRO: Absolutely.

9 JUDGE WOLFSON: That's a separate question.
10 And you may do that. So we've got an issue with
11 Mr. Kelly, I understand.

12 So that's the direction. The recipients of
13 these subpoenas are to be told that they are not to
14 respond to them at this time.

15 First of all, there are objections that are
16 going to be filed by Imerys and by J&J -- they were to
17 have been filed. I know you will as to Mr. Kelly.
18 I'm asking that the parties not file them as to the
19 other entities until new requests are framed and
20 served.

21 MS. PARFITT: Your Honor, we will move very
22 quickly to do that. I can assure the Court.

23 But what I don't want to happen, as well, as
24 your Honor has indicated, we don't want to do these
25 month-to-month things.

1 So once the plaintiffs have honed in a little
2 bit more pursuant to the Court's guidance today, we
3 will get those out forthwith. We're not going to wait
4 and come back. I don't assume the Court is asking us
5 to come before the Court again.

6 JUDGE WOLFSON: No.

7 MS. PARFITT: I assume that's not what you
8 want. So we'll move forthwith. And hopefully there
9 won't be the objection that we had this time.

10 JUDGE WOLFSON: My further suggestion is to
11 expedite this because it's not helpful for you to
12 draft them, serve them, and then simply give them
13 copies of them, and then we're back to, Wait a minute.
14 We've got problems.

15 Redraft them, send them to the defendants in
16 this case, and try and resolve the objections before
17 they are served on the third party. So once they are
18 served on the third party, we know these people are
19 cleared.

20 MS. PARFITT: Your Honor, the only thing I
21 would ask on this, and not just to throw salt at
22 anybody here, we do want to move quickly on this. We
23 understand what the Court has said today, keep apace,
24 and we're interested in doing that as well.

25 JUDGE WOLFSON: It's in your interest.

1 MS. PARFITT: It is in everyone's interest,
2 frankly, and most importantly our clients.

3 JUDGE WOLFSON: Right.

4 MS. PARFITT: So what I don't want to have is
5 a belabored meet and confer.

6 Judge Goodman, I guess this particularly goes
7 to you. If we get it to the defendants, we feel we
8 have listened to what the Court has said. It's
9 reasonable. They think it's unreasonable.

10 I would like to get it to the Court -- and
11 really if that's something we could then approach you,
12 Judge Goodman, very quickly on so that we could get
13 them out, and I think you've invited us to do so. So
14 I would take that invitation.

15 JUDGE GOODMAN: What I would like to do, I
16 would like to deal with this before the next
17 conference. So if you folks can't work it out, why
18 don't you plan to get me a joint submission within
19 two weeks.

20 Today is the 2nd. So by May 16. If you can
21 resolve it, you tell me, All is good, don't need you,
22 or you send me a joint letter that exhausts all sides'
23 positions on the issues.

24 It sounds to me like Mr. Kelly's is going to
25 be a separate animal because that's not as much a

1 scope as a privilege issue, but as to the others.

2 JUDGE WOLFSON: So if you are not going to
3 back off on Mr. Kelly, then I think go file your
4 application.

5 MS. PARFITT: Very good.

6 JUDGE WOLFSON: Great.

7 Off the record.

8 (Discussion off-the-record.)

9 (Proceedings concluded.)

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C E R T I F I C A T E

I, **Vincent Russoniello**, Official United States Court Reporter and Certified Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.

S/Vincent Russoniello
Vincent Russoniello, CCR
Certificate No. 675

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